



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0152; FRL- 9962-45-Region 3]

**Air Plan Approval; Delaware; Infrastructure Requirements for the
2012 Fine Particulate Matter Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of a state implementation plan (SIP) revision submittal from the State of Delaware pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. Delaware made a SIP submittal to address the infrastructure requirements for the 2012 fine particulate matter (PM_{2.5}) NAAQS. This action proposes to approve portions of this submittal pursuant to section 110 of the CAA. EPA is not proposing any action on the portion of the submittal which addresses interstate transport of emissions and intends to take later separate action on this portion.

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2017-0152 at <http://www.regulations.gov>, or via email to rehn.brian@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Gavin Huang, (215) 814-2042, or by e-mail at huang.gavin@epa.gov.

SUPPLEMENTARY INFORMATION: On December 14, 2015, the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC), submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2012 PM_{2.5} NAAQS.

I. Background

On July 18, 1997, EPA promulgated a new 24-hour and a new annual NAAQS for PM_{2.5} (62 FR 38652). On October 17, 2006, EPA revised the NAAQS for PM_{2.5}, tightening the 24-hour PM_{2.5} standard from 65 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 35 $\mu\text{g}/\text{m}^3$, and retaining the annual PM_{2.5} NAAQS at 15 $\mu\text{g}/\text{m}^3$ (71 FR 61144). Subsequently, on December 14, 2012, EPA revised the level of the health based (primary) annual PM_{2.5} NAAQS to 12 $\mu\text{g}/\text{m}^3$. *See* 78 FR 3086 (January 15, 2013).¹

Pursuant to section 110(a)(1) of the CAA, states are required to submit a SIP revision to address the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements to assure attainment and maintenance of the NAAQS -- such as requirements for monitoring, basic program requirements, and legal authority. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances of each NAAQS and what is in each state's existing SIP. In particular, the data and analytical tools available at the time the state develops and submits the SIP revision for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

Specifically, section 110(a)(1) provides the procedural and timing requirements for SIP submissions. Section 110(a)(2) lists specific elements that states must meet for infrastructure

¹ In EPA's 2012 PM_{2.5} NAAQS revision, EPA left unchanged the existing welfare (secondary) standards for PM_{2.5} to address particulate matter (PM) related effects such as visibility impairment, ecological effects, damage to materials and climate impacts. This includes a secondary annual standard of 15 $\mu\text{g}/\text{m}^3$ and a 24-hour standard of 35 $\mu\text{g}/\text{m}^3$.

SIP requirements related to a newly established or revised NAAQS such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

II. Summary of SIP Revision and EPA Analysis

On December 14, 2015, EPA received a SIP revision submittal from DNREC in order to satisfy the requirements of section 110(a)(2) of the CAA for the 2012 PM_{2.5} NAAQS. EPA reviewed the submittal and determined that it addressed the following infrastructure elements: Section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA. A detailed summary of EPA's review and rationale for approving Delaware's submittal may be found in the Technical Support Document (TSD) for this rulemaking action, which is available on line at www.regulations.gov, Docket ID Number EPA-R03-OAR-2017-0152. This rulemaking action does not include any proposed action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process if necessary.

Although Delaware's December 14, 2015 SIP submission contained provisions to address section 110(a)(2)(D)(i)(I) of the CAA, EPA is not proposing any action on the portion of the December 14, 2015 submittal which addresses section 110(a)(2)(D)(i)(I) regarding the interstate transport of emissions. EPA intends to take later separate action on this portion of Delaware's December 14, 2015 submittal. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

III. Proposed Action

EPA is proposing to approve the portions of Delaware's December 14, 2015 SIP revision which address for the following elements of section 110(a)(2) of the CAA for the 2012 PM_{2.5} NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Delaware's December 14, 2015 SIP revision addressing 110(a)(2)(A-C), (D)(i)(II) and (D)(ii), (E-H), and (J-M) provides the basic program elements specified in section 110(a)(2) of the CAA necessary to implement, maintain, and enforce the 2012 PM_{2.5} NAAQS. EPA will take separate action, at a future date, on the portion of the December 14, 2015 SIP revision addressing section 110(a)(2)(D)(i)(I) (interstate transport of emissions) for the 2012 PM_{2.5} NAAQS. This proposed rulemaking action does not include action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment planning requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process if necessary.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve portions of Delaware's December 14, 2015 SIP for section 110(a)(2) infrastructure requirements for the 2012 PM_{2.5} NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements

Authority: 42 U.S.C. 7401 et seq.

Dated: April 26, 2017.

John A. Armstead,
Acting Regional Administrator,
Region III.

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